

**Letter of Findings: 04-20110123P
Use Tax
For the Years 2008 and 2009**

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ISSUE

I. Tax Administration – Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer requests an abatement of the ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer is an Indiana manufacturer. Pursuant to an audit, the Indiana Department of Revenue ("Department") determined that Taxpayer did not pay sales tax on certain purchases of tangible personal property, nor did Taxpayer self-assess and remit the use tax to the Department. As a result, the Department's audit assessed Taxpayer additional use tax and interest.

Taxpayer paid the use tax. Taxpayer, however, requests that the Department abate the penalty. Upon receiving Taxpayer's request, the Department sent Taxpayer a letter that informed Taxpayer to provide additional evidence or request a hearing within twenty days. Taxpayer did not provide additional evidence or request a hearing within twenty days. This Letter of Findings, therefore, is written based on the documentation available within Taxpayer's protest file.

I. Tax Administration – Negligence Penalty.

DISCUSSION

The Department assessed negligence penalty on the tax liabilities. Taxpayer protested the imposition of penalty.

Pursuant to IC § 6-8.1-10-2.1(a), the Department may assess a ten (10) percent negligence penalty if the taxpayer:

- (1) fails to file a return for any of the listed taxes;
- (2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;
- (3) incurs, upon examination by the department, a deficiency that is due to negligence;
- (4) fails to timely remit any tax held in trust for the state; or
- (5) is required to make a payment by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department.

[45 IAC 15-11-2](#)(b) further states:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department may waive a negligence penalty as provided in [45 IAC 15-11-2](#)(c), in part, as follows:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and

circumstances of each case.

In this instance, Taxpayer maintained that its failure to remit the use tax was due to changes in staffing. However, Taxpayer did not provide any documentation to substantiate its claim. In the absence of other reliable supporting documentation, Taxpayer's letter alone was not sufficient to establish that Taxpayer's failure to timely remit the sales tax was due to reasonable cause and not due to negligence. Thus, Taxpayer's protest on the imposition of negligence penalty is respectfully denied.

FINDING

Taxpayer's protest on the imposition of negligence penalty is respectfully denied.

Posted: 09/28/2011 by Legislative Services Agency

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